



FILED

08/25/20
04:59 PM

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application of San Diego Gas & Electric
Company for a Permit to Construct the TL 6975
San Marcos to Escondido Project.

A. 17-11-010
(Filed November 15, 2017)

**ROBERT PACK, RANCHO DORADO OWNERS' ASSOCIATION, SAN ELIJO HILLS
COMMUNITY ASSOCIATION JOINT COMMENT ON PROPOSED DECISION**

April Rose Maurath Sommer
1547 Palos Verdes Mall #196
Walnut Creek, CA 94597
CPUC.attorney@gmail.com
(925) 310-6070
Attorney for Robert Pack

Melissa Brown, CCAM-LS, PCAM
The Avalon Management Group, Inc.
3618 Ocean Ranch Blvd.
Oceanside, CA 92056
Melissa@avalonweb.com
(760) 481-7444 x103
For Rancho Dorado Owners' Association

Rebecca McDonald
Walters Management
3207 Grey Hawk Court, Suite 140
Carlsbad, CA 92010
Rmcdonald@Waltersmanagement.Com
(760) 431-2522
For San Elijo Hills Community Association

Dated: August 25, 2020

SUMMARY OF RECOMMENDED CHANGES

1. The PD should be modified to deny approval of the proposed project or, alternatively, to order an EIR be prepared

TABLE OF CONTENTS

INTRODUCTION.....	3
ARGUMENT.....	4
I. GRANTING OF PTC PER THE PD ABSENT A REVIEW OF THE SAFETY IMPLICATIONS OF A NEW OVERHEAD POWER LINE IN AN EXTREME FIRE RISK DISTRICT WOULD BE A FAILURE TO PROCEED IN THE MANNER REQUIRED BY LAW, NOT SUPPORTED BY THE FINDINGS OR SUBSTANTIAL EVIDENCE, AND AN ABUSE OF DISCRETION.....	4
A. The Commission Must Consider Safety	4
B. The PD Does Not Consider or Mitigate the Proposed Project's Increased Fire Risk	6
C. Alternatives Must Be Analyzed that Can Decrease Fire Risk.....	8
FINALIZATION OF THE FIS/MND IN THE PD BE WOULD BE A FAILURE TO PROCEED IN THE MANNER REQUIRED BY LAW, NOT SUPPORTED BY THE FINDINGS OR SUBSTANTIAL EVIDENCE, AND AN ABUSE OF DISCRETION	9
II.	9
A. An EIR is Required	10
1. The Proposed Project Would have Significant Impacts to Aesthetics.....	10
B. There are Significant Cumulative Impacts	15
C. MND Should have Been Recirculated As an EIR	16
CONCLUSION	17

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Application Of Southern California Edison
Company (U 338-E) for a Certificate of Public
Convenience and Necessity: Eldorado-Lugo-
Mohave Series Capacitor Project.

Application 18-05-007
(Filed May 2, 2018)

**ROBERT PACK, RANCHO DORADO OWNERS' ASSOCIATION, SAN ELIJO HILLS
COMMUNITY ASSOCIATION JOINT COMMENT ON PROPOSED DECISION**

Pursuant to Rule 13.4 of the Rules of Practice and Procedure of the California Public Utilities Commission (“Commission”), Dr. Robert H. Pack, Rancho Dorado Owners' Association, and San Elijo Hills Community Association (Collectively “Dr. Pack”) submit these Joint Comments on the Proposed Decision Granting San Diego Gas And Electric Company A Permit To Construct The Tie Line 6975 San Marcos To Escondido Project (“Proposed Decision” or “PD”).

INTRODUCTION

SDG&E has not met its burden of proof “of affirmatively establishing the reasonableness of all aspects of its application”¹ and the application for a PTC for the proposed project should thus be denied. Should the Commission approve the PD, it would fail to proceed in the manner required by law; issue a decision not supported by the findings; and issue a decision whereby the findings are not supported by substantial evidence in light of the whole record. Such a decision would be subject to being overturned as an abuse of discretion.²

¹ D.06-05-016 at p. 7.

² Pub. Util. Code, § 1757, subd. (a); see *Save Our Peninsula Comm. v. Monterey Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 116–117.

The proposed project will increase the fire risk to an area designated by the Commission as having an existing elevated high fire risk and will significantly and cumulatively impact an important local scenic vista. The California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq. has not been complied with in many respects: the project description is fatally inaccurate; the proposed project will have significant impacts on aesthetics and on wildfire risk and thus an environmental impact report (“EIR”) is required to be prepared instead of a mitigated negative declaration (“MND”); and the final initial study and MND (“FIS/MND”) should have been recirculated after information was added regarding aesthetics and wildfire risk.

The PD fails to consider the safety implications of approving a project that will increase the risk of a fire ignition due to addition of a power line and re-energization of a power line that crosses a critical evacuation route. The Commission cannot rest upon a past practice of relying on general order 131-D (“GO 131-D”) to approve the proposed project without undertaking an analysis of the threat to public safety that the proposed project poses. The PD should be modified to either reject the proposed project outright or to require preparation of an EIR and consideration of the proposed project’s risk to public safety.

ARGUMENT

I. GRANTING OF PTC PER THE PD ABSENT A REVIEW OF THE SAFETY IMPLICATIONS OF A NEW OVERHEAD POWER LINE IN AN EXTREME FIRE RISK DISTRICT WOULD BE A FAILURE TO PROCEED IN THE MANNER REQUIRED BY LAW, NOT SUPPORTED BY THE FINDINGS OR SUBSTANTIAL EVIDENCE, AND AN ABUSE OF DISCRETION

A. The Commission Must Consider Safety

The Commission’s review must include consideration of whether this project poses a safety risk, in particular, in regards to fire risk. The PD makes no findings of fact or conclusions of law regarding safety. Absent such consideration, approval of the PD would be a failure to proceed in the manner required by law and an abuse of discretion.

In the IS/FMND, Commission Staff admit that the proposed project will increase fire risk but wrongly dismiss this as a significant impact based upon a newly-created standard contrary to the law, based upon the mere existence of laws regarding fire risk, and based upon SDG&E’s wildfire mitigation plan (“WMP”) only discussed in the FIS/MND.

Safety is not a factor which can be written out of consideration either by omission or by misapplying the law. Safety must be considered in this case pursuant to CEQA and pursuant to the Commission's constitutional and statutory duties and policies that establish that, above and beyond all else, the Commission is responsible for ensuring that safe and reliable utility services at reasonable rates. Where there has been no demonstration of need, as in this case, a project that would increase safety risk is per se unreasonable and must be denied. If need can be demonstrated by the Applicant, then the project must be designed so that fire risk is increased as little as possible through alternate routes, use of existing infrastructure, undergrounding, covered conductors, and other technologies and siting methodologies.

This project is in an area identified as having an extreme fire threat risk and Commission staff has admitted in the FIS/MND that this project would increase risk to public safety from fires.³ As described more fully by the City of San Marcos, the area's propensity for wildfires and limited evacuation routes in the area pose serious risk of deaths from fires. The proposed project increases the risk of a utility-caused wildfire and increases the likelihood of harm to individuals and the community. This project is not needed but, if it were, there are alternatives available that will decrease or eliminate the threats to safety and reliability that the proposed project poses.

The Commission is not absolved of its duty to protect public safety because this application is for a Permit to Construct. The Scoping Memo implies that pursuant to GO 131-D, the scope of an application for a PTC can only include compliance with CEQA, environmental impacts and EMF.⁴ In fact, GO 131-D provides only an interpretation of Public Utilities Code and CEQA and both require the Commission to take safety into consideration. GO 131-D states that the order it is made pursuant to multiple sections of the Public Utilities Code.⁵ Sections 701, 451, 761, and 768, in particular, provide the Commission the authority and duty to regulate the operation and safety of public utilities.⁶ The Commission's responsibility to protect public safety, specifically in regards to utility-caused wildfire risk, was heightened when the Commission determined that it was just and reasonable to impose upon ratepayers, including SDG&E

³ FIS/MND at p. 2-7.

⁴ A.17-11-010, *Assigned Commissioner's Scoping Memo and Ruling* (March 26, 2020) at pp. 1-2.

⁵ GO 131-D at Section 1 ("Pursuant to the provisions of Sections 451, 701, 702, 761, 762, 768, 770, and 1001 of the Public Utilities Code.")

⁶ *San Pablo Bay Pipeline Co. v. Pub. Utilities Comm'n* (2015) 243 Cal.App.4th 295, 308 *quoting Hartwell Corporation v. Superior Court* (2002) 27 Cal.4th 256, 265.

ratepayers like Dr. Pack, over \$15 billion in fees to create a wildfire insurance fund to bail out the regulated utilities. By turning ratepayers into insurers against wildfire damages of the regulated utilities, the Commission has made it all the more critical that it act to ensure that fire risk is not increased by its actions.

B. The PD Does Not Consider or Mitigate the Proposed Project's Increased Fire Risk

If the PD were approved and the proposed project built and operated, SDG&E will have failed to comply with the Public Utilities Code mandate that it “construct, maintain, and operate its electrical lines and equipment in a manner that will minimize the risk of catastrophic wildfire posed by those electrical lines and equipment”⁷ and the Commission will have failed its duty to protect public safety by approving new power lines without analyzing or mitigating the increased wildfire risk the lines will create.

The FIS/MND establishes that the proposed project will increase the risk of ignition from the power lines in a location with already extreme risk of fires from overhead power lines.⁸ It states that the Commission “acknowledge[s] that power lines are potential sources of ignition”⁹ and that the “Draft IS/MND analysis in Section 3.20, Wildfire, acknowledges that the addition of the Segment 2 New Build and the ongoing operation of Segments 1 and 3 have the potential to result in a minor increase in the risk of ignition from the power lines.”¹⁰

The FIS/MND perversely utilizes the existing elevated fire risk as a reason to dismiss a further increased risk of fire as a significant impact. The Staff's attempt to dismiss increased fire risk as a significant impact based upon a fictitious standard of “uncharacteristic existing conditions” is contrary to law and reason. The FIS/MND reads:

The CPUC previously has considered the question of whether the presence of a power line in this vicinity would be uncharacteristic compared to other areas of SDG&E's service territory with respect to fire hazard. . . In addition to the high percentage of Very High FHSZ within SDG&E's service territory, CPUC high fire threat mapping shows that about 48 percent of the service territory is in either a Tier 2 (elevated) or Tier 3 (extreme) fire threat area. Therefore, the location of the proposed Project is not unusual in its existing fire hazard potential. The Draft IS/MND properly uses fire hazard mapping to identify the existing conditions against which to evaluate the Project. The relevance of

⁷ Cal. Pub. Util. Code § 8386, subd. (a).

⁸ FIS/MND at p. 2-7.

⁹ FMND at p. 2-10.

¹⁰ *Ibid.*

these observation to the Project is the question of whether the wildfire risk in the Project vicinity is uncharacteristic in some way that would render the Project's impact significant, even considering the implementation of all plans and policies for wildfire prevention and suppression that apply to SDG&E's ongoing operation and maintenance of its electrical transmission system.¹¹

There is no standard per CEQA or in the Public Utilities Codes that requires a significant impact to be an "unusual circumstance" or "uncharacteristic" for it to be considered significant. This is a made-up excuse to justify the preparation of an MND when an EIR is plainly required based upon significant impact of increased fire risk, as well as other impacts. At the same time, the description of how there are no supposed "unusual circumstance" or "uncharacteristic" factors at play actually describes precisely this – the proposed project area is designated as elevated high fire risk, an unusual and uncharacteristic factor that make increased fire risk even more significant. The fact that a large portion of SDG&E territory has an existing high fire risk means that the Commission must take safety into consideration for many or all SDG&E power line applications, not that increased fire risk should be ignored as a significant impact in this large portion of the territory.

Furthermore, reliance upon such an analysis would have the absurd result of eliminating "the risk of exposing surrounding communities to exacerbated risk of the uncontrolled spread of a wildfire" as a significant impact in all locations that have high fire risk. This would be a dangerous road for the Commission to head down in a time where we need increased, not decreased, regulation of the *regulated* utilities to protect the public from power line ignited fires.

The PD makes a finding of fact that "all environmental impacts related to the proposed project are less than significant or reduced to less-than-significant levels with incorporation of feasible mitigation measures (see Mitigation Monitoring, Reporting and Compliance Program, Attachment A to this decision)."¹² The only mitigation measures in the mitigation program are strictly limited to project construction; there is no attempt to mitigate increased fire risk from the operation of the proposed project.

The PD also claims that the "Final IS/MND includes detailed Master Responses. . . explaining the reasons that wildfire risk from the project would be less than significant."¹³ First,

¹¹ FIS/MND at p. 2-7.

¹² PD at p. 12.

¹³ PD at p. 9.

this statement demonstrates that the FIS/MND includes substantial revisions relied upon in the PD and thus, recirculation is necessary. Secondly, Staff's explanation is limited to an attempt to dismiss increased fire risk as a significant impact based upon existence "of statewide or region-wide fire prevention and suppression requirements."¹⁴ All such requirements were in effect when PG&E power lines ignited dozens of fires in the deadly Wine Country Fires of 2017 and Camp Fire of 2018 and clearly did not serve to eliminate or decrease the risk.

The FIS/MND claims, for the first time, that compliance with SDG&E's WMP "would ensure that the Project would not substantially increase the risk of wildfire."¹⁵ This "substantial revision" triggers CEQA's recirculation requirement so that the public can comment on the proposed project's compliance with the 2019 or 2020 WMPs and other issues raised by the WMP including the use of siting and technologies to decrease fire risk.

C. Alternatives Must Be Analyzed that Can Decrease Fire Risk

The Commission should not pass on any opportunities to decrease fire risk and thorough analysis of all proposed new powers lines including alternatives analysis is an easy and necessary way in which the Commission can act to prevent decrease fire risk. An alternatives analysis is necessary for CEQA and for SDG&E and the Commission to fulfill their duties to minimize wildfire risk. The PD wrongly concludes that alternatives analysis is not required. Dr. Pack and others have presented fair arguments based upon substantial evidence that there are significant impacts to aesthetics and wildfire risk and thus an EIR is required in which an alternatives analysis must be conducted.

The PD addresses alternatives only by inappropriately arguing, based upon evidence put into the record following the submittal of the record in this proceeding, against alternatives. The PD states:

Additionally, although CEQA does not require evaluation of project alternatives in an IS/MND, in response to comments requesting alternatives or design improvements that would address concerns communicated in the Draft IS/MND, the CPUC issued Data Requests 12 and 13 to SDG&E seeking additional information. SDG&E's response to Data Request 12 indicated that it is not feasible to locate the TL6975 conductor on the existing TL13811/13825 poles in the Segment 2 right of way (including as an underbuilt line); that the underground option described in the PEA was technically feasible but not proposed because the cost would be potentially two or three times greater than that of the

¹⁴ FMDN at pp. 2-10 2-11.

¹⁵ FIS/MND at p. 3-64.

Project; and identifying additional aesthetic considerations that were incorporated into the proposed pole locations, heights, and finishes.¹⁶ (SDG&E's response to Data Request 12 is available at https://www.cpuc.ca.gov/environment/info/esa/TL6975/pdf/DR12/TL6975_DR12_102419.pdf, and is received into the record of this proceeding.¹⁹

This statement presents Applicant's assertions in an extra-record document as fact and reliance upon it in the PD is procedurally improper. Pursuant to Rule 13.4 and the Scoping Memo and Ruling, the matter in this case was submitted following submission of party's reply briefs.²⁰ It is improper for the record to be supplemented after the close of the record with new evidence entered into the record in the PD itself. Furthermore, Dr. Pack was denied any opportunity to cross examine SDG&E about the vague assertions made by SDG&E in the data request that is "received into the record of this proceeding" via a footnote in the PD.²¹ Dr. Pack's request for hearings was denied, intervenors were not given any opportunity to provide testimony, and Dr. Pack has no other opportunity to cross examine SDG&E about these or any other assertions. Applicant's assertions regarding the cost of undergrounding option is entirely unproven and is supported by no evidence in the record. Furthermore, increase in cost is not a justification for SDG&E to not minimize fire risk in the design of new power lines or for the Commission to grant a PTC for a new overhead powerline in an extreme fire threat district without having conducted a review of alternatives that could reduce wildfire risk.

II. FINALIZATION OF THE FIS/MND IN THE PD BE WOULD BE A FAILURE TO PROCEED IN THE MANNER REQUIRED BY LAW, NOT SUPPORTED BY THE FINDINGS OR SUBSTANTIAL EVIDENCE, AND AN ABUSE OF DISCRETION

A decision based upon the PD would be in legal error because it approves an MND and does not require preparation of an EIR. Commission Staff failed to prepare an EIR and did not address significant environmental impacts on the environment including, but not limited to, aesthetics, cumulative impacts, recreation, wildfire risk, protected land and species, and cultural

¹⁹ PD at p. 9.

²⁰ See A.17-11-010, Assigned Commissioner's Scoping Memo and Ruling (March 26, 2020) at p. 3; Rule 13.14

²¹ PD at p. 9fn16.

resources. Dr. Pack and the City of San Marcos have both presented fair arguments that there are environmental impacts which require an EIR and an EIR is thus required.

A. An EIR is Required

In his CEQA comments and in his Opening and Reply Briefs, Dr. Pack provided substantial evidence that supports the fair argument that there are significant impacts for which as EIR is required. “With certain limited exceptions, a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project ‘may have a significant effect on the environment.’”²² The fair argument standard is a “low threshold” test for requiring the preparation of an EIR.²⁸ “It is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.”²⁹ Evidence supporting a fair argument need not be overwhelming, overpowering or uncontradicted.³⁰

The CEQA Guidelines require the preparation and circulation of a draft EIR instead of an MND “If during the negative declaration process there is substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided.”³¹

1. The Proposed Project Would have Significant Impacts to Aesthetics

The proposed project will have a significant impact on aesthetics, in particular to the elevated expansive panoramic views to the west of the Pacific Ocean from Simmons Family Park. The PD relies upon flawed methodology and an inadequate and inaccurate analysis in the FIS/MND for the conclusion that there will be no significant impacts in regards to aesthetics. There will be a significant impact on aesthetics both by the proposed project alone and as a cumulative impact. The treatment of aesthetics, whereby new key observation points and scenic

²² *The Pocket Protectors v. City of Sacramento*, *supra*, 21 Cal. Rptr. 3d at 926-28 citing Pub. Resources Code, §§ 21100, 21151, 21080, 21082.2; Guidelines, §§ 15002, subd. (f)(1), (2), 15063; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75; *Quail Botanical Gardens v. City of Encinitas* (1994) 35 Cal. Rptr. 2d 470, 1601.

²⁸ *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal.3d at p. 84.

²⁹ *The Pocket Protectors v. City of Sacramento*, *supra*, 21 Cal. Rptr. 3d at p. 928 citing *Architectural Heritage Assn. v. County of Monterey*, *supra*, 122 Cal.App.4th at p. 1110.

³⁰ *Friends of the Old Trees v. Department of Forestry and Fire Protection* (1997) 52 Cal.App.4th 1383, 1402.

³¹ CEQA Guidelines, § 15073.5.

vistas were analyzed in the FMND following the public comment period, is also in violation of requirements to recirculate following substantial changes.

The problems with the aesthetics analysis begins with the illogical selection of inappropriate scenic vistas for analysis. In the Draft MND (“DIS/MND”), four scenic vistas were identified for inclusion in the aesthetics analysis - two along segment 2 and two along segment 3.³² Scenic view is defined as “generally considered to be a location from which the public can experience unique and exemplary views, which are typically from elevated vantage points that offer panoramic views of great breadth and depth.”³³ No specific information is provided on how these areas were selected or how the areas meet the definition. The DIS/MND states that there are no officially designated scenic vistas in the study area. In regards to how areas were selected for review, it just states that “scenic views are available from informal recreation areas.”³⁴ Rancho La Costa Preserve, Diamond Trail Preserve, Escondido Creek Preserve, and Sage Hill Preserve were selected. No explanation is provided as to how the *formal* recreation area of Simmons Family Park, designed to take advantage of its elevated vantage points that offer panoramic views of great breadth and depth, was not included for review.

Escondido Creek Preserve and Sage Hill Preserve do not meet the definition of a scenic vista because they are along segment 3 and are closed to the public. Segment 3 does not include any additional power lines, only reconducting so there should not have been any scenic vistas selected along segment 3 for review. “For the scenic vistas in Sage Hill Preserve (SHP) and Escondido Creek Preserve (ECP), the apparent change would be minimal because re-energization of Segment 3 would use existing poles and towers, resulting in low visual contrast for a less-than-significant impact.”³⁵ Additionally, in the FIS/MND it is revealed that these areas are not open the public.³⁶ Clearly, these areas do not meet the definition of a scenic vista because they cannot provide the public any views, as described in the DIS/MND. They should never should have been selected in the first place.

The entire aesthetics analysis in the DIS/MND consisted, therefore, of just two data points - Diamond Trail Preserve and Rancho La Costa Preserve. Critically, the most important

³² DIS/MND at Table 3.1-3.

³³ DIS/MND at p 3.1-1.

³⁴ DIS/MND at p. 3.1-3.

³⁵ FIS/MND at p. 3-27.

³⁶ FIS/MND at p. 3-59.

scenic vista looking westward from Simmons Family Park was not analyzed in the DIS/MND at all. Dr. Pack demonstrated in his CEQA comments that Diamond Trail Preserve should not have been part of the aesthetics review because there is no vista and no view of the Pacific Ocean from Diamond Trail Preserve and it is entirely unknown to the public. Instead of correcting the mistakes of selecting this area for review and then wrongly identifying the area as having a view of the Pacific Ocean, the DIS/MND states, “The inclusion of Diamond Trail Preserve in the analysis, even if that preserve is lightly used, does not render the analysis inadequate, as it is only one of several examples of scenic vistas considered.”³⁷

The DIS/MND also wrongly states that Rancho La Costa Preserve is located west of the proposed project so there was no impact on the westward scenic views. Dr. Pack demonstrated in his CEQA comments that part of the preserve is located east of the proposed project and so scenic views to the west would be impacted by the proposed project. In the FIS/MND, the mistake is not corrected but is compounded by the wrong statement that the new transmission lines were directly overhead the hiking trail (Quarry trail) within the preserve and thus views would not be impacted. Part of Quarry trail does run under the power lines but a significant portion of the trail is east of the proposed line and elevated and so the scenic view from the trail would be impacted by the proposed project. In fact, in the FIS/MND a portion that runs east of the proposed project is discussed a length.³⁸ The conclusion in the FIS/MND that “for the scenic vistas in Rancho La Costa Preserve and Diamond Trail Preserve, as listed in Table 3.1-3, the Project would not be visible in the view, and no impact on these scenic vistas would occur” is contrary to fact.

The most important scenic vista that will be impacted by the proposed project is at Simmons Family Park was not reviewed until the FIS/MND. In the FIS/MND there is significant information added regarding aesthetics. The FIS/MND states:

In making this finding, the CPUC has considered the opinions of commenters regarding the Project’s potential impacts, including aesthetic impacts, and the many photographs submitted that depict past and existing conditions along with commenters’ opinions about how the Project may alter those views. . . Several commenters offered unsubstantiated opinions that views from public vantage points such as Palomar Airport Road and Simmons Family Park would be significantly altered. However, in responses to these comments, the CPUC evaluated additional visual simulations from these vantage points and found that the Project’s effects on these views would be less than significant.³⁹

³⁷ FIS/MND at p. 3-26.

³⁸ FIS/MND at p. 2-175.

³⁹ FIS/MND at p. 1-4.

Simmons Family Park was added as a scenic viewpoint in the FIS/MND but was not evaluated properly and information from Dr. Pack regarding Simmons Family Park was wrongly dismissed. Instead of acknowledging the fact that Dr. Pack and other commenters provided valuable information in regards to the need to evaluate the visual impacts on Simmons Family Park, the Dr. Pack's efforts are attacked in the FIS/MND.⁴⁰ For example it states that "the CPUC finds that two photo simulations *purporting* to address views of the Project from Simmons Family Park and White Sands Drive..."⁴¹ implying, without foundation, that the photos might not be as described by Dr. Pack. The unwarranted critical response to Dr. Pack's evidence fails to achieve the result of distracting from the fact that the Staff itself has failed to provide an adequate and accurate analysis of impacts on aesthetics. "The agency [will] not be allowed to hide behind its own failure to gather relevant data. . . . CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences."⁴²

In this case, Commission Staff failed to gather the relevant data when it did not study the visual impact at all at Simmons Family Park in the DIS/MND. Then, when Simmons Family Park was included in the FIS/DMN, Staff further failed to gather relevant data when it omitted critical viewpoints from consideration at Simmons Family Park despite the fact that Dr. Pack provided evidence of the scenic viewpoint impacts. Contrary to the accusations made in the FIS/MND, Dr. Pack provided sufficient credible information to demonstrate an aesthetic impact from Simmons Family Park. He provided a photograph of the view of the Pacific Ocean from Simmons Family park and two simulations based upon this photo simulating the view prior to the conversion of wooden poles to much taller steel poles as part of the Shadowridge Transmission Enhancement Project and a view with the proposed project.⁴³ The actual photographic is captioned: "Simmons Family Park – Panoramic View looking due west to the Pacific Ocean"⁴⁴ providing information on the vantage point and field of view. Instead of

⁴⁰ FIS/MND at p. 1-4.

⁴¹ *Ibid.*

⁴² *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311; see also *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1378-79.

⁴³ FIS/MND at p. 179 (pdf page).

⁴⁴ FIS/MND at p. 179 (pdf page).

seeking to study the area from this same view, Commission Staff attacks the documentation of the photograph with vague accusation that “The original image *appears* to be taken from a drainage culvert located downhill from the playing field; no public trails are located in that area.”⁴⁵ This is factually inaccurate as the photograph depicts a well-used public trail within Simmons Family Park leading up to the scenic viewing bench at the top of the hill.

Again, instead of analyzing the impact on the view from the location provided by Dr. Pack, Commission Staff attacks his efforts by criticizing the quality of the photograph: “in the case of the simulation depicting Simmons Family Park, the photo is a distorted panoramic image depicting an unnaturally wide field of view.”⁴⁶ The view expansive and panoramic view from this location could only be captured by Dr. Pack in panoramic. There is thus some curvature inherent in the panoramic picture, but this is normal and not unexpected or uncommon.

Dr. Pack provided more than sufficient information for the Commission Staff to have recreated the photograph either in person or by searching for readily available photographs online.⁴⁷ It is not the responsibility of citizens to gather relevant evidence – “CEQA places the burden of environmental investigation on government rather than the public”⁴⁸ - and Dr. Pack provided sufficient information for the Commission Staff to have followed up with an acceptable analysis of their own of the impact to the view from Simmons Family Park.

In presenting the simulation of past conditions, Dr. Pack explained, “Simmons Family Park – Simulated pre-2010 based on actual photos of the wooden poles (see photo #29) for perspective and sizing.”⁴⁹ A caption for photo #29’s explained, “Actual photo taken on March 17, 2010 of pole #59 – Looking north on Coast Avenue – Showing the wooden pole and newly installed current steel pole. This image was used to make a number of simulations because it give sizing perspective and scale.”⁵⁰ These captions give details including not only the date the

⁴⁵ FIS/MND at p. 2-174 (emphasis added)

⁴⁶ FIS/MND at p. 1-4.

⁴⁷ See for example,

https://www.google.com/maps/uv?hl=en&pb=!1s0x80dc74d6f2331c09%3A0xbae03969e6ad368f13m1!7e115!4shttps%3A%2F%2Fh5.googleusercontent.com%2Fp%2FAF1QipPUONYR95UcGJ7cWZY4G74g0DMSEiCHHWuTneWf%3Dw190-h143-k-no!5ssimmons%20family%20park%20-%20Google%20Search&imagekey=!1e10!2sAF1QipO0qBRBAI-gtAZYbOLu3Md_bqqqblzuQcA_NsIT&sa=X&ved=2ahUKEwjQosiGqfroAhV6GTQIHeljAAgQoiowCnoECBIQB

⁴⁸ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

⁴⁹ FIS/MND at p. 179 (pdf page).

⁵⁰ FIS/MND at p. 178 (pdf page).

photo was taken, but the vantage point and field of view as well as the pole number of the existing power line. They also describe the methodology of creating the simulation, which for the simulations of the pre-2010 condition, used photo #29 which has an image of the wooden poles from an original photo taken in 2010 that gives “sizing perspective and scale.”

For the proposed project simulation, Dr. Pack explained that he used the same methodology that the Commission Staff used in its key observation point (“KOP”) analysis. “These simulations were based off SDG&E’s simulation for KOP D and from an original picture taken on March 17, 2010 of the wooden poles next to the brand new, at the time, steel pole (pole #59).”⁵¹

The conclusions reached in the FIS/MND that the view point impact from residential streets with no scenic view and the impact from Simmons Family Park, a public park that provides scenic, panoramic views of the Pacific Ocean are both moderate also demonstrates that the analysis of aesthetic is insufficient. This conclusion is illogical and against the evidence given that Simmons Family Park was dedicated a scenic public park twenty years ago because it is located at the top of the highest vista in the area and was laid out to ensure the western edge of the park with its dramatic sweeping views of the Pacific Ocean and over twenty miles of coastline, Batiquitos Lagoon, on clear days views of San Clemente and Catalina island some 65 miles off the coast, and dazzling sunsets. The other KOPs evaluated along segment 2 also designated are primarily roads going through the local neighborhoods and clearly Simmons Family Park has much more visual sensitivity than these other KOPs along segment 2.

B. There are Significant Cumulative Impacts

The PD addresses cumulative impacts as follows, “the IS/MND’s approach to cumulative impacts is adequate and complies with CEQA.”⁵² The FIS/MND does not properly identify or mitigate clear cumulative impacts. The FIS/MND’s analysis fails to provide the required substance and adopts an impermissible “de minimis” argument to find less than significant impacts in several areas.

⁵¹ FIS/MND at p. 153 (pdf page).

⁵² PD at p. 9.

CEQA requires preparation of an EIR whenever the cumulative impact of a project “may be significant and the project's incremental effect, though individually limited, is cumulatively considerable,” taking into account the effects of other past projects, current projects, and probable future projects.⁵³ “

The cumulative impacts of the poles installed as part of the Shadowridge Project are not adequately or accurately analyzed in the MND. The DIS/MND failed to identify the Shadowridge Project as a project that could have a cumulative impact. It was added as a past project in the FIS/MND in response to comments from Dr. Pack and others but there was inadequate and inaccurate cumulative analysis done. The FIS/MND fails to consider the visual simulations put into evidence by Dr. Pack showing the cumulative impact of the proposed project and Shadowridge steel poles. The FIS/MND attacks Dr. Pack’s photographs and simulations but does not make any attempt to recreate the photographs thus failing to gather the necessary evidence to perform cumulative impacts analysis. Even though it is not the responsibility of citizens to gather relevant evidence, Dr. Pack provided Commission Staff evidence it needed regarding clear cumulative impact to fulfill its responsibility of “environmental investigation” on government rather than the public”⁵⁶

A cumulative impacts analysis cannot be avoided based upon the project’s impacts being considered “de minimis.”⁵⁷ This faulty de minimis analysis pervades the IS/MND. For example, significant cumulative impacts to aesthetics are wrongly dismissed as “incremental”⁵⁹ and increased wildfire risk is wrongly dismissed as “minor.”⁶¹ “A minor increase in the risk of wildland fires in the area” would be a substantial impact even if the area were not already designated an elevated high fire threat district. The attempt to ignore this very serious impact by terming it minor is in contradiction to the law and the conclusions based upon this analysis are thus wrong.

C. MND Should have Been Recirculated As an EIR

⁵³ CEQA Guidelines §§ 15064(h)(1), 15065(a)(3).

⁵⁶ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

⁵⁷ See *Communities for a Better Environment v. California Resources Agency* 103 Cal.App.4th 98, 116 – 121, disapproved on other grounds in *Berkeley Hillside Preservation v. City of Berkeley*, 60 Cal.4th 1086, 1109 fn.3

⁵⁹ FIS/MND at p. 3-65 (editing marks in original).

⁶¹ DIS/MND at p. 3.20-14 (emphasis added).

The PD wrongly concludes that recirculation of the MND was not required pursuant to State CEQA Guidelines Section 15073.5 because there were no “substantial revisions” to the MND. The draft MND should have been recirculated after Commission Staff added additional evidence and conclusions following the close of the comment period. CEQA Guidelines section 15073.5 requires a lead agency to recirculate an IS/MND when the document must be substantially revised after public notice of its availability has previously been given, but prior to its adoption. A substantial revision is defined by the CEQA Guidelines section 15073.5 to include a new, avoidable significant effect and mitigation measures or project revisions that must be added in order to reduce the effect to insignificance.

Dr. Pack and other parties provided substantial evidence that the proposed project might have an impact on aesthetics and wildfire risk. Pursuant to CEQA Guidelines section 15073.5, an EIR, not just a new draft MND should have been circulated because “during the negative declaration process there [was] substantial evidence in light of the whole record, before the lead agency that the project, as revised, may have a significant effect on the environment which cannot be mitigated or avoided.” In this case, the FIS/MND presented, for the first time, analysis of aesthetics in regards to Simmons Family Park, addition of the Shadowridge power line project as a cumulative impact, and WMP as mitigation. These additions trigger the need for recirculation.

As described above, the analysis of aesthetics was insufficient and does not support the conclusion that there will be only moderate impacts on the scenic views at Simmons Family Park. Had the analysis of the adverse aesthetic impact significance been done correctly there would have been a significant impacts identified and that would trigger a recirculation per CEQA Guideline 15073.5 (b)(1). Likewise, had the analysis of cumulative impacts been done correctly whereby the impacts of multiple power lines were considered, most notably the Shadowridge project, there would have been significant impact identified triggering the need for recirculation. As discussed further above, the addition of SDG&E’s wildfire mitigation plan (“WMP”) as a mitigating measure also requires recirculation.

CONCLUSION

For the foregoing reasons, Dr. Robert H. Pack, Rancho Dorado Owners' Association, and San Elijo Hills Community Association respectfully requests that the Commission not approve the PD and deny approval of a PTC for the Proposed Project.

Respectfully submitted,

/s/ April Rose Maurath Sommer

April Rose Maurath Sommer
1547 Palos Verdes Mall #196
Walnut Creek, CA 94597
CPUC.attorney@gmail.com
(925) 310-6070

Attorney for Robert Pack

Melissa Brown, CCAM-LS, PCAM
The Avalon Management Group, Inc.
3618 Ocean Ranch Blvd.
Oceanside, CA 92056
Melissa@avalonweb.com
(760) 481-7444 x103
For Rancho Dorado Owners' Association

Rebecca McDonald
Walters Management
3207 Grey Hawk Court, Suite 140
Carlsbad, CA 92010
Rmcdonald@Waltersmanagement.Com
(760) 431-2522
For San Elijo Hills Community Association

Dated: August 25, 2020

APPENDIX: PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

PD is amended to deny the PTC.